

REMARKS

35 USC §112

Claims 48-61 stand rejected under 35 USC 112, second paragraph.

With regard to the use of word “characteristic”, the amendment of claims of 48, 49 and 52 to use the word “index” meets and overcomes the objection.

With regard to Applicant’s use of the word “functionality” in relation to either the isocyanate and/or the polyol component, Applicant relies upon the definition of the number of functional groups per molecule as described in the specification.

By reciting products of “isocyanate functionality and functionality of the polyol component,” Applicant refers to the meaning of the “functionality” as it is commonly understood by those with skill in the art. As used in the claim, this language refers to the number of reactive functional groups per molecule.

35 USC §102

Claims 1-13 and 39-61 all stand rejected under 35 USC 102 as being anticipated by references to Kenndoff et al. (5,844,013), Mueller et al. (5,543,225), Gardner Jr. (6,013,210), Madan et al. (6,294,248), and Bergdorfer et al. (4,456,642).

These rejections are met with a proper understanding of the polyurethane gel, as defined in this application. The Office Action states, “A polyurethane need only be crosslinked to meet the definition of “gel” in the patentable sense without its definition being particularly defined by the supporting disclosure....” The applicant, acting as his own lexicographer, defines “gel” as a specific gel produced and sold by the applicant for various specific purposes. This gel is a

specific material patented by BAYER, the basic patents being EP 57838 and EP 511570, which are cited in the description, on page 1.

On pages 3-4 the Office Action states that Kenndoff et al. discloses “preparations of articles comprising adhered articles of polyurethanes and polyurethane foams which read on the articles of applicant’s claims.” This is not an accurate statement for the gel claimed.

Kenndoff discloses hydrophilic PU gelfoams for wound dressings, where a PU gel is foamed with a non-aqueous foaming agent. The gel is a hydrogel and an additional water-absorbing material is added to the mixture. According to column 4, lines 20-22, it was an object to Kenndoff et al. to develop a wound dressing with a hydrogel foam, that does not in principle require an additional anti-stick layer. Thus Kenndoff discloses a material where the “foam” and the “gel” are one homogenous material, i.e. a “gelfoam”. The PU film which is optionally used as a backing is not a gel.

With the invention a PU gel according to EP 57838 and EP 511570 (see page 4 -14 of the description) a PU gel and a PU foam are combined within one article. The invention is new with respect to Kenndoff et al. Moreover, since a different technical field is concerned, the invention cannot be rendered obvious by Kenndoff either.

Mueller et al. discloses preparations of articles comprising adhered articles of PU and PU foams; no gels are disclosed.

According to the Office Action, a PU “need only be crosslinked to meet the definition of “gel” in the patentable sense.” This is not correct for the gel claimed. The PU gel materials used with the invention differ greatly from common “crosslinked polyurethanes” in the art. Moreover, the “gels” used with the articles of the invention are defined within the description as gels like those disclosed in EP 57538 and EP 511570 which are basic BAYER patents for respective gels.

The PU gels used with the invention are flexible and resilient materials used for cushions, shoe soles and the like. A description and definition is given on page 1 of the description, lines 16-27. As the inventor may be his own lexicographer and may define terms used in the claims within the description, the PU gel in the claims is not any crosslinked polyurethane, but a specific gel as defined in the description. Accordingly, Mueller does not apply.

The same reasoning applies to Gardner and Madan.

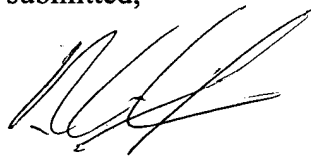
Burgdorfer does not disclose the combination of PU gel and a PU foam material. There are only mentioned common casing materials, as for example, textile materials or thin films as common cover layers or backings.

Conclusion

It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



By: Robert C. Haldiman
Husch & Eppenberger, LLC
190 Carondelet Plaza
St. Louis, MO 63105
309-637-4900
309-637-4928 FAX